

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.) Hon. Basil H. Lorch III

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH NU TECHNOLOGIES, INC.**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee ("Trustee") for the debtor, Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves the Court to approve the compromise and settlement of claims between the Trustee and Nu Technologies, Inc. ("Nu Tech"). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") on December 6, 2010. The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Docket No. 110] on December 28, 2010.
2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.
3. Prior to the Chapter 11 Case, Nu Tech purchased cattle from Debtor pursuant to contract. Nu Tech paid Debtor down money ("Down Money") to be applied towards the purchase price of the contract cattle. The Trustee claims that Nu Tech owed Debtor on account of Debtor's pre-Petition Date delivery of cattle to Nu-Tech. Nu Tech has satisfied a

portion of the Trustee's claims, but Debtor's books and records indicate that Nu Tech still owes Debtor \$419,139.19 on account of cattle delivered to Nu Tech and evidenced by ELC Invoice Nos. 314381, 314382, 316185, 314403, 310552, and 316181 (the "Nu Tech AR"). The Trustee has disclaimed rights to \$46,810.01 of the Nu Tech AR pursuant to a Court-approved settlement agreement with Vermillion Ranch Corporation d/b/a Northern Livestock Video Auction ("NLVA").

4. Nu Tech disputes the amount of the Trustee's claim, specifically challenging the value of the delivered cattle and trucking charges that Nu Tech claims Debtor previously agreed to pay.

5. Nu Tech filed a proof of claim ("Nu Tech POC") in the Chapter 11 Case. The Nu Tech POC is designated on the official claims register maintained by The BMC Group, Inc. as Claim No. 198. The Nu Tech POC asserts a secured setoff claim in the amount of \$32,160, alleging that Nu Tech paid Debtor \$32,160 in Down Money for cattle that were never delivered to Nu Tech. The Trustee has filed an objection to the Nu Tech POC.

The Settlement

6. The Trustee has negotiated a settlement of all disputes with Nu Tech on the terms set forth in the Settlement Agreement and Mutual Release attached hereto as Exhibit A ("Settlement Agreement"). Pursuant to the Settlement Agreement, Nu Tech agrees to pay the Trustee the total sum of \$352,019.12 ("Payment Amount") in settlement of the Nu Tech AR. The Payment Amount represents a compromise and settlement of the Nu Tech AR in the amount of \$384,179.12, reduced by Nu Tech's secured setoff claim in the amount of \$32,160. Also, and because the Trustee has already disclaimed rights to \$46,810.01 of the Nu Tech AR, Nu Tech will deliver \$46,810.01 of the Payment Amount to NLVA in exchange for a release from NLVA

and the remaining \$305,209.11 of the Payment Amount to the Trustee. The Trustee requests that the Court modify the automatic stay of 11 U.S.C. § 362 to the extent necessary to allow Nu Tech to set off the Down Money.

7. The \$305,209.11 to be paid to the Trustee represents funds owing on Debtor's accounts receivable. In accordance with the terms of the Plan, the Trustee shall treat this payment as a recovery of collateral funds.

Basis for Relief

8. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

9. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc., 886 F.2d 921, 927 (7th Cir. 1989).

10. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The reduction in the Nu Tech AR represents a reduction for the costs of trucking, which Nu Tech disputes, and cattle that did not conform with contract requirements. The Trustee believes that the reduction is insignificant and justified. The alternative to the settlement is litigation of the claims between the Trustee and Nu Tech which would result in expenses and delay and create the possibility of an outcome that would result in a smaller recovery to the estate.

11. The Trustee requests the Court to specify in any order granting this Settlement Motion that the automatic stay of 11 U.S.C. § 362 is modified to the extent necessary to allow Nu Tech to setoff the Down Money.

12. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit A and grant the Trustee all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Dustin R. DeNeal

Counsel for James A. Knauer, Chapter 11 Trustee

Terry E. Hall (#22041-49)
Kevin M. Toner (#11343-49)
Harmony Mappes(#27237-49)
Dustin R. DeNeal (#27535-49)
Kayla D. Britton (#29177-06)
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204-1782
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
terry.hall@faegrebd.com
kevin.toner@faegrebd.com
harmony.mappes@faegrebd.com
dustin.deneal@faegrebd.com
kayla.britton@faegrebd.com

Wendy W. Ponader (#14633-49)
600 East 96th Street, Suite 600
Indianapolis, IN 46240
Telephone: (317) 569-9600
Facsimile: (317) 569-4800
wendy.ponader@faegrebd.com

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt
davidabt@mwt.net

C. R. Bowles, Jr
cbowles@bgdlegal.com

John Hunt Lovell
john@lovell-law.net

Mark A. Robinson
mrobinson@vhlaw.com

Jeffrey R. Erler
jerler@ghjhlaw.com

Edward M King
tking@fbtlaw.com

Randall D. LaTour
rdlatour@vorys.com

John R. Carr, III
jrciii@acs-law.com

Bret S. Clement
bclement@acs-law.com

Daniel J. Donnellon
ddonnellon@ficlaw.com

Stephen A. Weigand
sweigand@ficlaw.com

John Frederick Massouh
john.massouh@sprouselaw.com

John W. Ames
james@bgdlegal.com

Robert Hughes Foree
robertforee@bellsouth.net

Kim Martin Lewis
kim.lewis@dinslaw.com

Jeremy S Rogers
Jeremy.Rogers@dinslaw.com

Ivana B. Shallcross
ishallcross@bgdlegal.com

Deborah Caruso
dcaruso@daleeke.com

Meredith R. Thomas
mthomas@daleeke.com

William Robert Meyer, II
rmeyer@stites.com

Allen Morris
amorris@stites.com

Charles R. Wharton
Charles.R.Wharton@usdoj.gov

James Bryan Johnston
bjtexas59@hotmail.com

James T. Young
james@rubin-levin.net

David L. LeBas
dlebas@namanhowell.com

Judy Hamilton Morse
judy.morse@crowedunlevy.com

John M. Thompson
john.thompson@crowedunlevy.com

Jessica E. Yates
jyates@swlaw.com

John Huffaker
john.huffaker@sprouselaw.com

Matthew J. Ochs
kim.maynes@moyewwhite.com

Laura Day Delcotto
ldelcotto@dlgfir.com

Kelly Greene McConnell
lisahughes@givenspursley.com

T. Kent Barber
kbarber@dlgfir.com

Ross A. Plourde
ross.plourde@mcafeetaft.com

Walter Scott Newbern
wsnewbern@msn.com

Kirk Crutcher
kcrutcher@mcs-law.com

Todd J. Johnston
tjohnston@mcjllp.com

Timothy T. Pridmore
tpridmore@mcjllp.com

Theodore A Konstantinopoulos
ndohbky@jbandr.com

Karen L. Lobring
lobring@msn.com

Sandra D. Freeburger
sfreeburger@dsf-atty.com

Lisa Koch Bryant
courtmail@fbhlaw.net

Elliott D. Levin
edl@rubin-levin.net

John M. Rogers
johnr@rubin-levin.net

John David Hoover
jdhoover@hooverhull.com

Sean T. White
swhite@hooverhull.com

Jay P. Kennedy
jpk@kgirlaw.com

John R. Burns
john.burns@faegrebd.com

Michael W. McClain
mike@kentuckytrial.com

James Edwin McGhee
mcghee@derbycitylaw.com

Jerald I. Ancel
jancel@taftlaw.com

David Alan Domina
dad@dominalaw.com

Jill Zengler Julian
Jill.Julian@usdoj.gov

Michael Wayne Oyler
moyler@rwsvlaw.com

James E. Rossow
jim@rubin-levin.net

Steven A. Brehm
sbrehm@bgdlegal.com

James M. Carr
jim.carr@faegrebd.com

Shawna M. Eikenberry
shawna.eikenberry@faegrebd.com

James A. Knauer
jak@kgrlaw.com

Christie A. Moore
cm@gdm.com

Peter M. Gannott
pgannott@gannottlaw.com

Joseph H. Rogers
jrogers@millerdollarhide.com

Andrew D. Stosberg
astosberg@lloydmc.com

Christopher M. Trapp
ctrapp@rubin-levin.net

Jennifer Watt
jwatt@kgrlaw.com

William K. Flynn
wkflynn@strausstroy.com

Michael Benton Willey
michael.willey@ag.tn.gov

Chrisandrea L. Turner
clturner@stites.com

Scott R. Leisz
sleisz@bgdlegal.com

Terrill K. Moffett
kendalcantrell@moffettlaw.com

Matthew Daniel Neumann
mneumann@hhclaw.com

Amanda Dalton Stafford
ads@kgrlaw.com

William E Smith
wsmith@k-glaw.com

Thomas C Scherer
tscherer@bgdlegal.com

Jeffrey J. Graham
jgraham@taftlaw.com

Kent A Britt
kabritt@vorys.com

Jeffrey L Hunter
jeff.hunter@usdoj.gov

Jason W. Cottrell
jwc@stuartlaw.com

James B. Lind
jblind@vorys.com

Anthony G. Raluy
traluy@fbhlaw.net

Jack S. Dawson
jdawson@millerdollarhide.com

Terry E. Hall
terry.hall@faegrebd.com

Erick P. Knoblock
eknoblock@daleeke.com

Shiv Ghuman O'Neill
shiv.oneill@faegrebd.com

Eric C. Redman
ksmith@redmanludwig.com

James E. Smith
jsmith@smithakins.com

Kevin M. Toner
kevin.toner@faegrebd.com

Eric W. Richardson
ewrichardson@vorys.com

Joe Lee Brown
Joe.Brown@Hardincounty.biz

Thomas P. Glass
tpglass@strausstroy.com

Kay Dee Baird
kbaird@kdlegal.com

Paul M. Hoffman
phoffmann@stinson.com

Brian H. Meldrum
bmeldrum@stites.com

Natalie Donahue Montell
nmontell@bgdlegal.com

Brian Robert Pollock
bpollock@stites.com

Matthew R. Strzynski
mstrzynski@kdlegal.com

Kayla D. Britton
kayla.britton@faegrebd.com

David A. Laird
david.laird@moyewhite.com

Trevor L. Earl
tearl@rwsvlaw.com

Joshua N. Stine
kabritt@vorys.com

Amelia Martin Adams
aadams@dlgfirm.com

Robert A. Bell
rabell@vorys.com

Melissa S. Giberson
msgiberson@vorys.com

U.S. Trustee
ustpreion10.in.ecf@usdoj.gov

Dustin R. DeNeal
dustin.deneal@faegrebd.com

Jay Jaffe
jay.jaffe@faegrebd.com

Harmony A. Mappes
harmony.mappes@faegrebd.com

Wendy W. Ponader
wendy.ponader@faegrebd.com

Joe T. Roberts
jratty@windstream.net

Robert K. Stanley
robert.stanley@faegrebd.com

Andrea L. Wasson
andrea@wassonthornhill.com

Joshua Elliott Clubb
joshclubb@gmail.com

Ben T. Caughey
ben.caughey@icemiller.com

Stephen E. Schilling
seschilling@strausstroy.com

David W. Brangers
dbrangers@lawyer.com

Martha R. Lehman
mlehman@kdlegal.com

Kevin J. Mitchell
kevin.mitchell@faegrebd.com

Erin Casey Nave
enave@taftlaw.com

Steven Eric Runyan
ser@kgrlaw.com

Andrew James Vandiver
avandiver@aswdlaw.com

Chad Duane Wuertz
chad@wuertzlaw.com

Christopher E. Baker
cbaker@thbklaw.com

Nicole R. Sadowski
nsadowski@thbklaw.com

/s/ Dustin R. DeNeal